

Alaska Statute

Aaron Farmer, 'Elder, Kevin', Kelly McCloud,

Michael Berman to: Kristina E. Tonn, Rodgers, Michael

06/19/2012 08:48 AM

Cc: Julianne Socha, James Morgan

From:

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To:

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Julianne Socha/R5/USEPA/US@EPA, James Morgan/DC/USEPA/US@EPA

The following is a message from James Morgan:

Attached is the Alaska statute that was amended in 2008 to incorporate a negligence provision. The relevant new section is 46.03.790(h) wherein violation of the permit program are negligent violations, notwithstanding other sections of that code that call for criminal negligence. You have to look at the cited criminal provisions to tease out the entire idea.

[attachment "Sec\_\_46\_03\_790\_\_Criminal\_pen.doc" deleted by Julianne Socha/R5/USEPA/US]



## 1 of 1 DOCUMENT

## ALASKA STATUTES

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\*\*\* Current through the 2011 First Regular Session of the Twenty-Seventh State Legislature and the 2011 First and Second Special Sessions. \*\*\*

\*\*\* Annotations current through opinions posted on Lexis.com as of January 6, 2012. \*\*\*

TITLE 46. WATER, AIR, ENERGY, AND ENVIRONMENTAL CONSERVATION CHAPTER 03. ENVIRONMENTAL CONSERVATION ARTICLE 9. PROHIBITED ACTS, PENALTIES, AND DAMAGES

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Alaska Stat. § 46.03.790 (2012)

Sec. 46.03.790. Criminal penalties

- (a) Except as provided in (d) of this section, a person is guilty of a class A misdemeanor if the person with criminal negligence
- (1) violates a provision of this chapter, AS 46.04, AS 46.09, or AS 46.14, a regulation or order of the department, or a permit, approval, or acceptance, or a term or condition of a permit, approval, or acceptance issued under this chapter, AS 46.04, AS 46.09, or AS 46.14;
- (2) fails to provide information or provides false information required by AS 46.03.465, 46.03.475, 46.03.755, AS 46.04, or AS 46.09, or by a regulation adopted by the department under AS 46.03.020(12), 46.03.460, 46.03.755, AS 46.04, or AS 46.09;
- (3) makes a false statement or representation in an application, label, manifest, record, report, permit, or other document filed, maintained, or used for purposes of compliance with AS 46.03.250 -- 46.03.313 applicable to hazardous wastes or a regulation adopted by the department under AS 46.03.250 -- 46.03.313;
- (4) makes a false statement, representation, or certification in an application, notice, record, report, permit, or other document filed, maintained, or used for purposes of compliance with AS 46.03.460 -- 46.03.475, AS 46.14, or a regulation adopted under AS 46.03.020(12), 46.03.460, or AS 46.14; or
- (5) renders inaccurate a monitoring device or method required to be maintained under AS 46.14, a regulation adopted under AS 46.03.020(12) or AS 46.14, a permit issued by the department or a local air quality control program under AS 46.14, or a permit issued by the department under the program authorized by AS 46.03.020(12).
  - (b) [Repealed, § 5 ch 141 SLA 1990.]
  - (c) Each day on which a violation described in this section occurs is considered a separate violation.
- (d) Notwithstanding (a) of this section, a person who with criminal negligence discharges oil in violation of AS 46.03.740 or who, when required by an oil discharge to comply with the provisions of an oil discharge contingency plan approved under AS 46.04.030, with criminal negligence fails to comply with the plan is guilty of
  - (1) a class C felony if the oil discharge is 10,000 barrels or more;

- (2) a class A misdemeanor if the oil discharge is less than 10,000 barrels.
- (e) [Repealed, § 5 ch 141 SLA 1990.]
- (f) [Repealed, § 5 ch 141 SLA 1990.]
- (g) Notwithstanding AS 12.55.035(b), upon conviction of a violation of a regulation adopted under AS 46.03.020(12) or of a violation related to AS 46.14 and described in (a) of this section, a defendant who is not an organization may be sentenced to pay a fine of not more than \$10,000 for each separate violation.
  - (h) Notwithstanding (a) and (d) of this section, a person is guilty of a class A misdemeanor if the person negligently
    - (1) violates a regulation adopted by the department under AS 46.03.020(12);
    - (2) violates a permit issued under the program authorized by AS 46.03.020(12);
- (3) fails to provide information or provides false information required by a regulation adopted under AS 46.03.020(12);
- (4) makes a false statement, representation, or certification in an application, notice, record, report, permit, or other document filed, maintained, or used for purposes of compliance with a permit issued under or a regulation adopted under AS 46.03.020(12); or
- (5) renders inaccurate a monitoring device or method required to be maintained by a permit issued under or a regulation adopted under AS 46.03.020(12).
  - (i) In this section,
    - (1) "barrel" has the meaning given in AS 46.04.900;
    - (2) "criminal negligence" has the meaning given in AS 11.81.900.

**HISTORY:** (§ 3 ch 120 SLA 1971; am § 11 ch 220 SLA 1976; am § 8 ch 266 SLA 1976; am §§ 8, 9 ch 116 SLA 1980; am §§ 11, 12 ch 93 SLA 1981; am § 112 ch 59 SLA 1982; am § 8 ch 77 SLA 1984; am §§ 12 -- 14 ch 59 SLA 1986; am §§ 2 -- 5 ch 141 SLA 1990; am § 62 ch 21 SLA 1991; am §§ 19, 20 ch 74 SLA 1993; am § 4 ch 1 FSSLA 2001; am §§ 9, 10 ch 143 SLA 2004; am § 8 ch 17 SLA 2008)

**NOTES:** REVISOR'S NOTES. --Subsection (h) was enacted as (i); relettered in 2008, at which time subsection (h) was relettered as (g) and subsection (g) was relettered as (i).

CROSS REFERENCES. --For fines for misdemeanors and felonies, see AS 12.55.035; for imprisonment for felonies, see AS 12.55.125, and for misdemeanors, see AS 12.55.135.

ADMINISTRATIVE CODE. --For emissions inspection and maintenance requirements, see 18 AAC 52, art. 1.

EFFECT OF AMENDMENTS. --The 2004 amendment, effective July 1, 2004, inserted references to AS 46.03.020(12) in paragraphs (2), (4), and (5) of subsection (a), inserted "or a permit issued by the department under the program authorized by AS 46.03.020(12)" in paragraph (a)(5), inserted "of a regulation adopted under AS 46.03.020(12)" in subsection (h) [relettered as (g)], and made related changes.

The 2008 amendment, effective April 15, 2008, added subsection (i) [now (h)].

OPINIONS OF ATTORNEY GENERAL. --Proposed regulation establishing compliance with management practice under AS 41.17 and regulations as an affirmative defense to prosecution for alleged water quality violations for the forestry industry alone would cause an equal protection problem; executive agency cannot, by regulation, create an affirmative defense to what the legislature has determined should be prosecuted. 1980 Op. Atty Gen. No. 10.

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NOTES TO DECISIONS

THIS SECTION AND AS 46.03.760 HELD NOT UNCONSTITUTIONAL. -- See, decided prior to the 1976 amendment of those sections, Stock v. State, 526 P.2d 3 (Alaska 1974).

PROSECUTION FOR OIL POLLUTION NOT BARRED BY IMMUNITY GRANTED UNDER FEDERAL LAW. --Prosecution of an oil tanker captain for negligent discharge of oil was not barred by immunity provided for in the Federal Water Pollution Control Act, 33 U.S.C. § 1321. Hazelwood v. State, 912 P.2d 1266 (Alaska Ct. App. 1996), rev'd on other grounds, 946 P.2d 875 (Alaska 1997).

PROSECUTION FOR OIL POLLUTION UNDER INEVITABLE DISCOVERY DOCTRINE. --Findings under the inevitable discovery doctrine were allowable in the prosecution of an oil tanker captain for negligent discharge of oil except for blood-alcohol evidence and defendant's own statements. *Hazelwood v. State, 912 P.2d 1266 (Alaska Ct. App. 1996)*, rev'd on other grounds, *946 P.2d 875 (Alaska 1997)*.

SENTENCE. --Upon conviction of defendant for negligent discharge of oil under this section, the trial court had authority to impose both a fine and imprisonment and could impose 1000 hours of community work service in lieu thereof. *Hazelwood v. State, 962 P.2d 196 (Alaska Ct. App. 1998).* 

COLLATERAL REFERENCES. --Necessity of showing scienter, knowledge, or intent, in prosecution for violation of air pollution or smoke control statute or ordinance. 46 ALR3d 758.

USER NOTE: For more generally applicable notes, see notes under the first section of this article, chapter or title.